DOCUMENT RESUME

ED 059 812 RC 005 975

AUTHOR	Ducheneaux, Franklin D.
TITLE	Study Paper on Indian Tribal Officers.
INSTITUTION	South Dakota Univ., Vermillion.
REPORT NO	GRB-SP-32
PUB DATE	65
NOTE	30p.
EDRS PRICE	MF-$0.65 HC-$3.29
DESCRIPTORS	*Administrative Organization; *American Indians; Committees; *Governmental Structure; *Leadership Responsibility; Policy; Political Power; *Tribes

ABSTRACT

A "short orientation to new officers" in American Indian tribal governments is provided in this paper to better prepare tribal leaders to explore further the responsibilities of their positions. Origins of the powers possessed by tribal governments are reviewed. In addition, tribal government is considered separately by function as a political organization, a corporate organization, and a business organization. The duties, responsibilities, and privileges of tribal officials are discussed in terms of the office and the governmental function. (JH)

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STUDY PAPER ON

INDIAN TRIBAL OFFICERS

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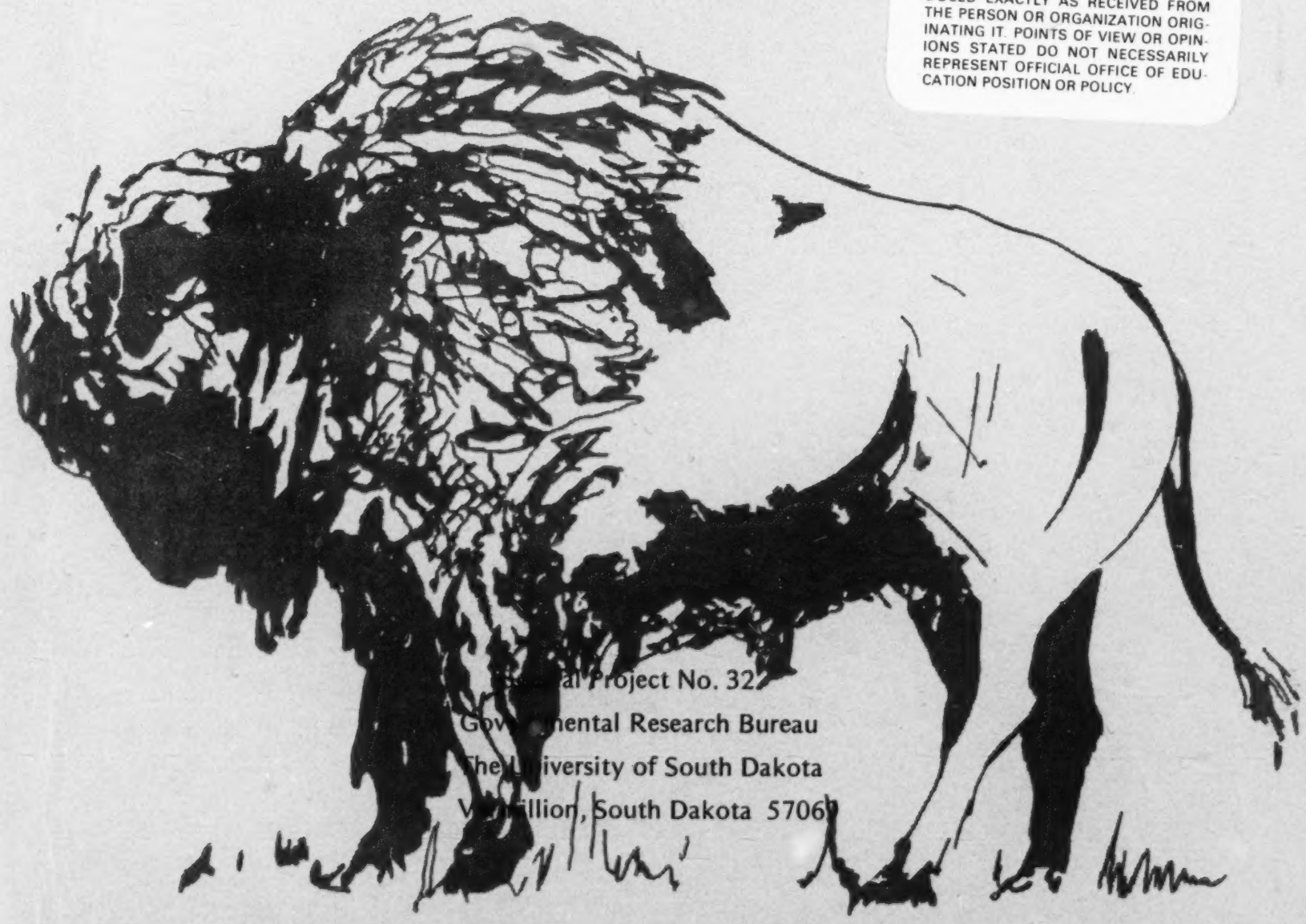

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The University of South Dakota
V...illion, South Dakota 5706...

RC005975

STUDY PAPER
ON
INDIAN TRIBAL OFFICERS

Prepared under the direction of

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and
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by

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Published in association with the
Institute of Indian Studies
The University of South Dakota
Vermillion, South Dakota 57069

Special Project No. 32
Governmental Research Bureau
The University of South Dakota
Vermillion, South Dakota 57069

PREFACE

The purpose of this study paper is to provide a guide to Indian tribal officers especially newly elected or newly appointed officers. Presented here is a brief description of the powers belonging to Indian tribal government followed by a summary of the duties, responsibilities and privileges of the officers of tribal government. Some attention is also given to the Indian tribal corporate organization.

In no sense is this study designed to provide definitive answers to complicated legal questions. In some instances only a resort to a lengthy study of the tribal constitution, bylaws, and court cases can provide reliable legal answers and often uncertainty will still remain. This paper is designed, rather, to provide a short orientation to new officers so that they may be in a better position to explore further the duties and responsibilities of their position.

This study is primarily the work of Franklin Ducheneaux (who later received his law degree from The University of South Dakota) and was written in 1965 while he was a student at the University. It is to be stressed that the value of this study is as a point of departure rather than as a conclusive work. Tribal governments vary not only in formal governmental arrangements but especially in accepted tribal practice.

The research for this project was carried on with the financial assistance of the Bureau of Indian Affairs. Without the assistance of the national and area offices of the Bureau, this research could not have been completed.

W. O. Farber, Chairman
Department of Government

CONTENTS

Preface

Introduction 7

Derivation of the Powers of Indian Tribes 7
Limitations on Tribal Sovereignty 10
The Wheeler-Howard Act. 12
The Constitution and the By-laws. 13

Officers of Tribal Government: Political Organization. 14

Importance of Tribal Officers 15
Duties, Responsibilities, and Privileges. 17
Tribal Committees 21
Contrasting Legislative, Executive, and Judicial Officers . 22

Officers of Tribal Government: Corporate Organization. 24

Importance of Officers. 25
Duties, Responsibilities, and Privileges. 26

The Tribe as a Business Organization 28

Conclusion 30

Appendix: Tribal Government Questionnaire. 32

Introduction

It is the purpose of this project to show the importance of officers in Indian tribal government and a tribal corporation, and to outline the duties, responsibilities and privileges of each officer in the government organization and in the business organization with emphasis on (1) the managerial responsibilities of these officers, (2) the primary functions of the tribe as a business organization, and (3) the differences in the duties of the officers as they are found in the legislative, executive, and judicial branches of government. To achieve this purpose effectively, it will be necessary to ascertain the origin of the powers possessed by the tribal organization and to determine the present status of such power. This background material must, of course, be cursory and limited in reference only to major legislation and court cases which might affect tribal political power.

Derivation of the Power of Indian Tribes

Tribal political organizations now possess very few powers of a sovereign, independent nation which were originally attributed to them by John Marshall, the great Chief Justice of the Supreme Court in the early nineteenth century. Those that they do possess are, in many cases, subject to review by the Secretary of the Interior or the Commissioner of Indian Affairs. However, it is important to the later discussion to determine the origin and present status of those powers possessed by the tribes.

Contrary to general opinion, the powers of the tribal organizations are not powers granted to the tribes by the United States government. Such powers as the various tribes in the United States now possess are the inherent powers of sovereign nations such as are possessed by all sovereign nations.[1] Prior to the coming of white settlers from Europe and up until the time of the establishment of sovereign nations, such as the United States, on this continent, the Indian population on this continent was fragmented into several loose federations possessed of inherent sovereign powers such as the power to make war, the power to treat with other nations, the power to make self-governing laws, and such other powers of which fully independent, sovereign nations are possessed. Indeed, the first federal constitution adopted on the American continent was adopted by the Iroquois nation of Indians long before the discovery of the new world.[2]

The fact that the United States recognized such sovereign powers in the Indian tribes is evidenced by the action taken with regard to the Indian tribes by the United States government from the beginning of its existence under its present constitution. The first such evidence is found in the United States Constitution in Section 8 wherein it provides that "The Congress shall have Power... to regulate Commerce with the foreign Nations, and among the several States, and with the Indian Tribes..."[3] In said section, the Constitution groups the Indian tribes with 'foreign Nations' and 'the several States', both of which have been or are sovereign political

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1. Cohen, Felix S., Federal Indian Law, (United States Government Printing Office, Washington: 1958), p. 396.

2. Parker, A. C., "The Constitution of the Five Nations" (New York State Museum Bulletin, No. 184).

3. Constitution of the United States, Art. I, sec. 8, cl.3.

units in themselves. This, then, is evidence that the United States recognized the sovereign status of the Indian tribes, although, as will be referred to later, the Indian tribes occupy a somewhat different political status in its relationship with the United States government than that of either the States or of foreign nations.

As the United States government and its people began to spread across the continent, claiming territory for the Union and settling on the land which, up until that time, had been inhabited by the Indian tribes, the United States, under the Commerce clause[4], began first to treat with, then make war upon, and finally subjugate the Indian tribes they encountered on their drive across the continent. Two salient points are noticed with respect to the United States' action concerning the Indian tribes during this time. First, when one sovereign political body treats with or declares war upon another political body, this constitutes recognition of the latter's political sovereignty by the former. Secondly, in acquiring the lands upon which the Indians lived, the United States usually attempted, either through purchase or otherwise, to extinguish the Indian title thereto.[5] Where Indian titles had not been sufficiently extinguished by the federal government, subsequent grantees of the government often found, to their sorrow, that their claim was invalid against the Indian title. Such acts by one government towards another are only consistent with recognition of sovereignty.

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4. Constitution of the United States, Art. I, sec. 8, cl. 3.

5. Cohen, Felix S., The Legal Conscience, "Original Indian Titles", (New Haven, Yale University Press, 1960), pp. 273-304.

Limitations on Tribal Sovereignty

While there is no doubt that the powers possessed by the Indian tribal organizations are, for the most part, inherent powers of a sovereign, there is also no doubt that such powers have been and can be severely restricted by the federal government. At this stage, it might be helpful to understand how this limitation of power developed.

As has been stated, prior to the coming of the white settlers, the Indian tribes were fully independent political organizations possessed of all powers inherent in a sovereign body. This status continued until the establishment of the United States government. From that point on, Indian tribes within the territorial limits of the United States were not permitted to treat with other foreign nations. All external affairs of the Indians were governed by treaties between the Indians and the United States. The United States considered the tribes within the area claimed by it to be subjugated, semi-independent nations. While the internal affairs of the tribes was generally left to the sole government of the tribes, the United States governed their contact with the outside world. As long as they did not interfere with the United States' plans of settlement, they were left to their own governing bodies. This method of dealing with the Indians was continued in some form or other until 1830 and the enactment of the "Removal Act" under President Jackson.[6]

During the "Removal" era, Congress provided that federal land west of the Mississippi would be exchanged for tribal lands east of the

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6. Act of May 28, 1830, 4 Stat. 411, R. S. sec. 2114, 25 U.S.C. 174.

Mississippi. The exchange was to be voluntary, but in many instances the Indians were forced from their ancestoral homes. It was asserted that the Indians were not ready for the white man's way of life and, therefore, it would be better to segregate them in the west.[7] The Indians were generally left to their own resources in their new land as long as they did not come into conflict with the ever-encroaching white settlers.

Eventually, the United States government was forced by the settlers coming into Indian territory to take away the land of the Indian and to place him on reservations. On the reservation, the government attempted to break up the Indians' communal way of life and to force him into an agrarian society. The traditional tribal political units were broken up and the hereditary chiefs were discredited and frustrated in their efforts to continue as before. Tne Indian had ceased to be a semi-independent national and had become a ward of the government. His every action and need became the concern of the Bureau of Indian Affairs.

It was also during this period that the United States ceased to deal with the Indians through the use of the treaty-making power. In 1871, Congress enacted the Indian Appropriation Act of March 3, 1871, which provided, by a rider attached thereto, that the use of the treaty-making power of the United States would be abandoned in dealing with the Indian tribes and that, subsequently, all Indian matters would be governed by congressional legislation.[8]

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7. Federal Indian Legislation and Policies, 1956 Workshop on American Indian Affairs, (University of Chicago: Dept. of Anthropology), p. 9.

8. Act of March 3, 1871, 16 Stat. 566.

The Wheeler-Howard Act

In the late 1920's and the early 1930's, Congress realized that their previous policies of confinement and paternalism in Indian affairs were not affording a solution to the ever-growing Indian problem. In 1933, John Collier became Commissioner of Indian Affairs and, immediately, he began working for a "new deal" for the Indians. Discovering that the Indians were rapidly becoming a poverty-stricken minority under the previous policies and that their lands were being lost and education neglected, Collier was instrumental in the enactment of the Indian Reorganization Act of June 18, 1934.[9]

The Indian Reorganization Act or, as it is more commonly known, the Wheeler-Howard Act is one of the most important and comprehensive Indian laws yet passed. Though the Act dealt with a wide variety of subjects including land, credit, education, Indian employment and the tribal organizations, the most important part was the provision for the establishment of tribal self-government under tribal constitutions and by-laws. Section 16 of the Act provided for organization of any eligible tribe under a constitution and by-laws which had been ratified by a majority of the adult members of the tribe[10] and Section 17 provided for incorporation of the tribe as a business unit with the same majority ratification.[11]

Most of the eligible tribes were quick to see the value of the Act and soon began adopting constitutions and by-laws thereunder. Of the 271

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9. Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. 463.

10. Ibid., Section 16.

11. Ibid., Section 17.

Indian tribes, bands and communities which voted to accept or reject the Act, 196 voted to accept the provisions and 75 voted to reject the provisions.[12] By 1940, 94 Indian tribes had adopted constitutions and by-laws under the Act and had the documents ratified by the required vote of the adult members of the tribe.[13] Some tribes accepted the provisions of the Act, but operated under constitutions adopted prior to the enactment of the Wheeler-Howard Act. And some tribes rejected the Act, but still operated under constitutions. No matter under which Act or under what form of constitution the tribes operated, the Wheeler-Howard Act was primarily responsible for self-government among the tribes which has helped the tribes grow economically and politically.

The Constitutions and the By-Laws

The constitutions and by-laws adopted pursuant to the Wheeler-Howard Act show a common influence and guidance in their similarity of language and provisions. This is due to two reasons. First, Section 16 of the Act states that the adoption and ratification of the constitution and by-laws shall be subject to the approval of the Secretary of the Interior and it also sets out some of the powers which should be covered in such a constitution.[14] This would influence the similarity of the documents. Secondly, all the Indian tribes possess the same general powers as they have been limited by the United States government. Since this, too,

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12. Haas, Theodore H., Ten Years of Tribal Government under I.R.A., Tribal Relations Pamphlets--1, (United States Indian Service: 1947), p. 13.

13. Ibid., p. 21.

14. Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. 463, Section 16.

would dictate to a great extent the contents of such documents, it is not too surprising that they are so similar.

The constitutions typically contain provisions, with slight variation from tribe to tribe, for membership, territory, governing body, enumerated powers, elections, land, and amendments. The constitutions cover all the powers which have been left to the tribes under the Wheeler-Howard Act and after the extensive limitations imposed on the governmental powers of the tribes down through the years by the United States government. The by-laws are also very similar and usually provide for the duties of the officers and the councilmen, the oath of office, salaries, and meetings of the council. The constitutions and by-laws also contain other provisions which cover unique problems and needs of the specific tribes.

Under Section 17 of the Wheeler-Howard Act, the tribes are authorized to draw up a corporate charter to facilitate the operation of the tribe as a business unit. Although the majority of the tribes have not elected to do so, those that have find that their charter is also very similar to other tribal charters. This is due to the same reasons stated above and because business corporations as a whole possess the same broad powers and objectives. The charters generally contain provisions for perpetual succession, membership, management, corporate existence, powers, property, dividends and accounts, amendments, and ratification. In most instances, the powers expressed in the charter are contained in the constitution and by-laws.

Officers of Tribal Government: Political Organization

The officers of a typical tribal organization, whether organized under the Wheeler-Howard Act or otherwise, generally include a Chairman

(President), Vice-Chairman (Vice-President), Secretary, and Treasurer. These executive officers are usually authorized by the tribal constitution and are either elected at large by the people or elected by the members of the tribal council from within or without its own membership or by a combination of both these methods. There also may be a provision in the constitution for other officers "as it (the tribal council) may from time to time desire."[15] It is also possible that the various committees and even the tribal council as a whole may exercise some of the functions normally attributed to an executive officer. This would surely be true of an executive committee if such was authorized by the council. There are, of course, other authorized officers such as the sergeant-at-arms and the chaplain, but these officers have such a limited, well-defined function that they shall not be considered in this discussion.

The executive officers in the tribal political organization may or may not be identical to those in the tribal corporate organization. In most observed instances, they are identical, but, insofar as the necessity for and the duties of such officers in the two separate spheres of action are differentiated, they shall be so differentiated here. The executive officers and quasi-executive bodies cited above will be discussed here with reference to their necessity in the tribal political organization and with reference to their duties, responsibilities, and privileges within said organization.

Importance of Tribal Officers

The executive branch of the tribal political organization as a composite

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15. Constitution and Bylaws of the Rosebud Sioux Tribe, Art. III, sec. 7.

body is, of course, vitally necessary to the operation of the tribe. While the legislative branch--the tribal council--determines the broad policies of the tribe and points out the direction the tribe must take in any given matter, it is incumbent upon the executive body to interpret and implement these policies and to direct and guide the action of the tribe along the lines laid out by the council. In short, the executive body must carry out the will of the tribe as expressed by the tribal council.

The Chairman or President, as the case may be, is the single most important and necessary officer within the whole organization. He is the leader of the tribe and it is to him that the tribal members and the outside world look to for expression of the tribal policies. He also must direct and staff the executive branch in order that they can carry out the will of the tribal council. He is, or should be, the stabilizing influence in the tribe. The necessity of the Vice-Chairman in the organization is, of course, proved by that of the Chairman since the Vice-Chairman's primary function is to act in the Chairman's stead when the Chairman is incapacitated or absent.

A political organization must have continuity and a historical base to facilitate its operations. The Secretary is necessary in the structure of the tribal organization because he provides this continuity and historical base by recording for posterity all formal and legal acts of the tribal political organization. The Secretary is also the instrument by which the public is kept informed of the actions of their government.

In any governmental organization which has within its means large sums of money to be receipted and disbursed, an officer is necessary to

safeguard and handle such sums. This is the function of the Treasurer of the tribal organization. He receives all monies accruing to the tribe and pays all the debts incurred by the tribe. He must account to the tribe for all such disbursements and receipts. As such monetary officer, he is very important in the tribal structure.

All of the above-mentioned officers are vitally necessary to the smooth and efficient operation of the tribal political organization. They each have well-defined, separate functions calling for individual and special talents. The necessity for the existence of the quasi-executive bodies such as the committee of the council will be discussed later.

Duties, Responsibilities, and Privileges

The scope of the officer's powers may be divided into three areas: (1) those powers which are derived directly from the constitution; (2) those powers which are delegated to such officers by the tribal council; and, (3) those powers which the officers, particularly the Chairman, has exercised through custom and tradition. These three areas of power apply, more or less, to all of the four officers discussed above and, to some extent, to the committees of the council.

The constitutional powers of the Chairman in the tribal organization is usually provided for in the by-laws of the tribal constitution. A typical constitution, that of the Rosebud Sioux Tribe, states that, "It shall be the duty of the president to preside over all meetings of the Rosebud Sioux Tribal Council and carry out all orders of the Council. He shall vote only in case of a tie."[16] This statement of duties and

16. Bylaws of the Rosebud Sioux Tribe, Art. I, sec. 1.

responsibilities is, as are most of the tribal constitutional provisions for the Chairman's authority, somewhat vague and very limited in scope. Under such language, the Chairman is a mere figurehead of the tribe and an errand boy for the council which is generally not true. The constitution gives the Chairman very little of the actual authority he exercises. Under the constitution, he presides at all meetings of the council, rules on motions of the council and guides that body in its deliberations. More importantly, he is given the authority to implement the decisions of the council.

The greater part of the authority of the Chairman comes from the authority delegated to him by the tribal council. These powers vary widely from tribe to tribe, but practically all have delegated some of their power to the Chairman. In this role, the Chairman often carries on extensive negotiations with other governmental bodies and outside personnel, which function is reserved by most tribal constitutions to the council. He is sometimes authorized to disburse funds of the tribe without prior approval of the council. In his managerial role, he exercises general supervision of all other tribal officers and top supervisory tribal employees. In a great many other areas, the Chairman can be authorized to act in the council's stead and, in the more progressive tribes, is so authorized.

Finally, the Chairman derives some power from custom and tradition. He generally exercises some degree of influence on the tribal council's deliberations by the very fact of his position. As today's counterpart of the traditional chief, he has certain privileges and responsibilities which might have accrued to an old chief such as right as a spokesman for the tribe and charitable concern for individual members of the tribe.

As chief executive, he may exercise, to some degree, the power of the veto which is not ordinarily provided for in the constitution.[17] He can also bind the tribe--in certain instances--without authority of the council. In many areas, he can exert powers not authorized by either the council or the constitution.

The duties of the Chairman become the duties of the Vice-Chairman when he is acting in the Chairman's stead. Other than that, the Vice-Chairman is usually a member of the council and sometimes assists the Chairman in exercising his duties.

The duties of the Secretary are derived mainly from the constitution and by delegation of authority from the council. As a constitutional officer, the Secretary is a recorder of the proceedings of the council and general business officer of the executive branch. The applicable provision of the Rosebud bylaws states that:

> "The council secretary shall keep a full report of all proceedings of each regular and special meeting of the tribal council and shall perform such other duties of like nature as the council shall from time to time by resolution provide, and shall transmit copies of the minutes of each meeting to the council, to the superintendent of the reservation, and to the Commissioner of Indian Affairs."[18]

As can be seen from the language, the constitution gives the Secretary no real power for positive action within the tribal organization, but merely provides that the Secretary shall do the "housework" of the organization.

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17. Of 15 questionnaires sent out to various tribal organizations in South Dakota, North Dakota, and Nebraska, only one tribe, Cheyenne River, indicated that the vote power was exercised by the Chairman. See appendix for questionnaire form.

18. Bylaws of the Rosebud Sioux Tribe, Art. I, sec. 3.

Beyond this, the Secretary is delegated some decision-making power by the council in certain instances. He may be authorized to act on an executive committee to transact tribal business in the absence of the council. The Secretary also must maintain the records of the tribe for inspection by the general public of the tribe. He may also supervise certain tribal employees who may be engaged in carrying out the Secretary's duties.

It is the duty and responsibility of the Treasurer to safe-guard and account for all money in the custody of the council. He shall "accept, receive, receipt for, preserve, and safeguard" all such funds.[19] He also has supervisory authority for all funds and property under the jurisdiction and control of the tribal council. It is his duty to take appropriate action and institute appropriate procedures to insure that no funds are disbursed unless in accordance with prior authority from the council and to insure that no funds are disbursed as loans without adequate security, unless security is waived by the council. He must also provide for an audit of the books of the tribe at intervals stated by the council and provide copies of such audit to interested personnel of the Bureau and the tribe and for public inspection. He also must make and maintain an inventory for all tribal property and he must keep records to show the use and disposition of such property. Finally, he is required to report to the tribe at every meeting of the council the financial condition of the tribe and any matters which would be related to the financial condition.[20]

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19. Bylaws of the Cheyenne River Sioux Tribe, Art. I, sec. 4.

20. From questionnaires.

Tribal Committees

The above narrates the duties and responsibilities of the major tribal officers which are authorized by the constitutions of the tribes. However, there are certain bodies within the tribal structure which are not authorized specifically by the constitution and whose duties are primarily legislative, but which do exercise some executive authority. These include the standing and special committees of the council and the executive committee if such is authorized by the council. Although not officers within the general meaning of the term, they do, in some cases, function as officers.

The tribal councils usually operate with a variety of standing and special committees. These committees cover matters such as land and land purchase, law and order, enrollment and membership, health and education, welfare, claims and legislation, industrial development, budget and finance, resource development, and credit and employment.[21] Committees are also set up for certain specific, short-time needs. However, no matter what the committee, or its function or purpose, is, it nearly always performs some duties generally attributed to the executive. The primary function of the committees is to investigate problems in their individual areas of control and to recommend to the council the action which need be taken in these areas. In performing their function, the committees often exercise authority normally in the realm of executive power. In this respect, they oversee and review tribal projects which fall within their scope of interest. Also, the committees exercise control over minor problems which are generally

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21. From questionnaires.

thought of as executive problems such as the hiring and firing of tribal personnel and controlling applications for tribal loans. Their executive authority, though limited in scope, is and has been an important factor in tribal operations.

A very important body in most tribal organizations is the executive committee. By its very name, it implies the use of executive authority. It is usually composed of the Chairman, Vice-Chairman, Secretary, Treasurer, and one or more members of the tribal council. Its duty is to act in certain matters when the council is not in session. It acts upon the explicit direction of the tribal council in most major matters, but handles routine matters without such direction. In emergency matters, it may take such action as may be dictated by the problem at hand. It must, however, report to the tribal council all action it has taken since the last meeting of the council.

Contrasting Legislative, Executive, and Judicial Officers

The tribal governments are separated, to some extent, into the three governmental divisions: legislative, executive, and judicial. While there is no specific provision for judicial officers in the constitution, it does empower the tribal council to establish and maintain tribal courts. The judicial power of the tribe is vested in tribal courts whose jurisdiction extends in the case of the Oglala Sioux Tribe "...to all cases involving only members of the Oglala Sioux Tribe, arising under the constitution and by-laws or ordinances of the tribe, and to other cases in which all parties consent to jurisdiction."[22] In the judicial branch,

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22. Constitution and Bylaws of the Oglala Sioux Tribe, Art. V, sec. 2.

the officers are one or more judges. The term of their office and method of selection is controlled by the council and their duty is to hear and decide all cases which may rightfully come before them. Also, they may recommend action concerning the judicial system to the council. In contrast to this, it is the function of the legislative officers to determine tribal policy and to enact legislation in furtherance of that policy. Likewise, it is the duty of the executive officers to interpret and implement such policy decisions. While the separation of powers of the three branches may be somewhat vague and tenuous, it does exist.

Officers of Tribal Government: Corporate Organization

As has been stated previously, the Wheeler-Howard Act provides in Section 17 for the incorporation of the tribe into a business unit. While not many of the tribes have availed themselves of this provision, those that have incorporated have found that it greatly aids in the establishment and operation of any business enterprise in which the tribe may wish to engage. Several tribes in South Dakota have found it profitable to engage in business activities whether under a corporate charter or not. Included in such activities are tribal ranches, a telephone company, supermarket, tribal land enterprises, livestock sale barn, laundromat, and tourist facilities. While it is not necessary to operate such activities under a corporate charter, the charter may make it easier in many respects. One tribal Chairman stated that operating under a corporate charter makes it easier to borrow money and to use corporate funds in the business.[23]

The management of the corporate tribe is usually vested in the tribal council or in a board of directors elected by the tribal members at large or by the tribal council. Whichever body has the managerial responsibility, it may delegate such authority to either the executive officers of the tribe, to an executive committee, or to a body of officers especially elected for that purpose. Under the arrangement set up by the Rosebud Sioux tribe, the officers of the corporate tribe are the same as those of the political tribe and that will be the arrangement discussed here.[24]

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23. From personal interview with Cato Valandra, Chairman, Rosebud Sioux Tribe.

24. From questionnaires.

Importance of Officers

The necessity of the various officers in the corporate tribal organization is much the same as the necessity of the officers in the political tribal organization. Although the specific duties performed by each are very different, the broad aims and necessity of each is quite similar. In the corporate organization, the tribal council acts as a "board of directors" for the corporation and, in this capacity, lays down the policies of the corporation and makes the major decisions concerning corporate activities. In the final analysis, this is the body which is responsible to the corporate members, i.e., the members of the tribe, for the successful operation of the corporate enterprises. However, as a practical matter, a large portion of the powers of the corporation held by the tribal council is delegated to the officers of the corporation.

As has been said, the necessity for the officers in the corporate organization is much the same as for those in the political organization. Under the Rosebud system, the Chairman of the tribal council is also the primary executive officer of the corporate tribe. Likewise, the Vice-Chairman, Secretary, and Treasurer of the tribal council also function as comparable officers in the corporate tribe. In this capacity, however, the above officers direct their efforts toward the managing of the tribal enterprises rather than toward governmental channels. As the top executive officers in the corporation, they must interpret and implement the policy decisions of the tribal council and provide an efficient staff to carry out these decisions. They, also, recommend changes or modifications in policies to the tribal council.

Duties, Responsibilities, and Privileges

Again, the duties of the officers of the corporate tribe are not too unlike those of the officers of the political tribe since the operation of a governmental organization is quite similar to the operation of a business organization. The tribal council, operating as a board of directors and repository of corporate power, can and does propose and establish tribal enterprises consistent with tribal resources. It guides and directs its executive officers in carrying out its policies and decisions. It also governs the disposition of any profits which might be realized from these enterprises.

If, as we have stipulated, the executive officers of the tribal council are the same as those of the tribal corporation, these officers play a comparable role in the corporation as they do in the tribal government. The Chairman is the chief executive officer in the structure, filling the roles of Chairman of the board and president of the corporation. In these two capacities, he recommends to the council institution of certain policies in the corporation and changes or modifications in existing policies. In implementing the policies of the council, he must provide personnel to operate the tribal enterprises and supervise such personnel in the performance of their functions.

The Secretary and Treasurer also perform similar functions in both roles. The Secretary acts as a recording agent for the corporation, keeping records of all official acts of the corporation and of the proceedings of the council in corporate matters. He would also have the task of keeping the public informed of corporate activity and would, in general, carry on corporate correspondence. The Treasurer would have the responsibility

of accounting for the disbursement and receipt of funds from corporate accounts and of safe-guarding corporate funds and property. It would also be his duty to establish and maintain corporate books and provide for a regular audit of these books. Finally, he must keep the council informed of the use and disposition of such funds and property of the financial condition of the tribal enterprises.

The Tribe as a Business Organization

As has already been referred to, the tribes can operate as a business organization whether it is incorporated under the Wheeler-Howard Act or not. Some tribes, such as the Cheyenne River Sioux Tribe, do operate extensive tribal business enterprises without benefit of a tribal corporate charter, including a tribal "laundromat", tribal supermarket, tribal ranch, and a tribal telephone company. But, as also been stated, the charter facilitates such operations in many respects. For example, it affords more latitude in borrowing money. It makes it easier for the tribe to take and hold assets such as land and property. The charter makes it possible to keep separate the two tribal organizations which provides for more efficient operation of both organizations. Assuming these advantages and, also, assuming that a tribe has, or plans, any extensive business enterprises, it would be desirable for the tribe to adopt a corporate charter.

The two main purposes one can see for operating the tribe as a business unit are, one, to provide funds for the continued operation of the tribe as a governing body and, two, to provide jobs and experience for the tribal members who might be employed in the operation of these enterprises. Many of the services supplied by the tribes as a business unit have been or would have been supplied by outside interests. It is easy to see why the tribes would want to provide these services for the tribal members and the public at large. The profits realized in the operation of these enterprises could be used to materially raise the standard of living of the tribal members, in carrying out the welfare functions of the tribe,

and to provide funds for the continued existence of the tribe. Secondly, in areas where employment opportunities are severely limited, operation by the tribe of these enterprises would provide jobs for the members of the tribe and, also, experience in such jobs which might be used elsewhere.

The nature of the tribe as a corporation is governed by a Federal corporate charter issued in accordance with the provisions of Section 17 of the Wheeler-Howard Act. The Rosebud charter is typical of these corporate charters[25] and provides for most of the powers, duties, and responsibilities a private business corporation might have. First, it provides for corporate existence and perpetual succession as a Federal corporation.[26] It provides that membership in the corporation shall consist of all persons who are members of the tribe in question and for management responsibility to reside in the tribal council.[27] It determines the powers, privileges, and limitations of the tribal corporation.[28] It also provides the procedure by which the tribal corporation can terminate the supervisory control of the Secretary of the Interior over certain of the corporate powers.[29] Lastly, it provides for limitiations on corporate property, issuance of corporate dividends, maintenance of corporate accounts, amendments to the corporate charter, and ratification of the Charter.[30] As such tribal corporation,

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25. Corporate Charter of the Rosebud Sioux Tribe.
26. Ibid., Sections 1 & 2.
27. Ibid., Sections 3 & 4.
28. Ibid., Section 5.
29. Ibid., Section 6.
30. Ibid., Sections 7, 8, 9, 10, and 11.

the tribe can establish and maintain any business enterprise consistent with corporate powers, with tribal policy, and with Bureau approval.

Conclusion

If it is the purpose of this project to investigate and determine the nature of tribal government and the officers' duties therein, it should also recommend changes in governmental procedure which might be helpful in the operation of the tribe. Any such changes would, of course, have to be made within the tribal governmental system itself and not in conflict with established tribal and Bureau policies.

In determining the nature of the government and its officers, it seems that the power of the executive officers, particularly the Chairman, should be strengthened and expanded. This would provide greater stabilization in the government and its policies. It would also make the tribe as a whole more progressive in its relations with outside interests and with the economic problems of the people of the tribe. The executive committee, if the tribe has provision for one, should also be given more power so that, when the council is not in session, emergency problems could be dealt with more quickly, decisively, and efficiently. The scope of action of the standing and special committees of the council should be more specifically defined and their investigations and recommendations should be on a broader basis, leaving the detail decisions to the executive branch which is, or should be, better equipped to handle them.

Among those tribes which have not done so, encouragement should be given to adopt a tribal corporate charter. These tribes should be encouraged

to make use of the resources and opportunities existing on their reservations under such a charter. First, this would bring more active participation by individual members of the tribe in tribal affairs. Secondly, profits realized from these business enterprises would materially aid the tribal government in carrying out its functions. Finally, if termination of Federal control over Indian affairs should ever occur, and with it, an erosion of tribal governmental powers, a tribal corporation would provide a continuing body for the economic and social advancement of the Indian people.

Appendix A

Tribal Government Questionnaire

Your name:_____ Position_____

1. List the standing committees authorized by your Constitution or tribal organization and indicate what the committee does where not obvious.

   (a)
   (b)
   (c)
   (d)
   (etc.)

2. Are the above committees elected by the council or appointed by the Chairman?

   Yes_____ No_____

3. What, briefly, do you consider the customary duties of the:

   (a) Chairman
   (b) Vice-Chairman
   (c) Secretary
   (d) Treasurer
   (e) Other executive officers (name)

4. Do you, as Chairman, have the veto power over resolutions of the council?

   Yes_____ No_____

5. Do you think the Chairman should have the veto power? Yes____ No____

6. Do you think the provisions of the tribe's current Constitution and Bylaws are adequate to meet the needs of your tribal organization?_____

   If not, what would you propose as changes or additions?